



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0088]

Foreign Ownership, Control, or Domination of Nuclear Power, and Non-Power Production or Utilization Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide on Foreign Ownership, Control, or Domination of Nuclear Power, and Non-Power Production or Utilization Facility. The NRC is issuing this guidance to provide NRC staff's regulatory position to applicants for, and licensees of, nuclear power reactors and non-power production or utilization facilities (NPUFs), regarding methods acceptable to the staff of the NRC for complying with foreign ownership, control, or domination (FOCD) requirements, including guidance on the subject of foreign financing.

This draft regulatory guide may be used in connection with license applications for new facilities, renewal of existing licenses, or applications for approval of direct or indirect transfers of facility licenses.

DATES: Submit comments by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2016-0088**. Address questions about NRC dockets to Carol Gallagher;

telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: OWFN-12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Shawn W. Harwell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-1309, e-mail: Shawn.Harwell@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID **NRC-2016-0088** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2016-0088**.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The draft regulatory guide is available in ADAMS under Accession No. ML16137A520.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID **NRC-2016-0088** in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

The NRC is issuing this draft regulatory guide on FOCD, to provide NRC staff's regulatory position regarding methods acceptable to the staff for determining whether an applicant for a nuclear facility license issued under sections 103.d., "Commercial Licenses," or 104.d., "Medical Therapy and Research and Development," of the Atomic Energy Act of 1954, as amended (AEA or Act), is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (individually or collectively, a foreign entity). Pursuant to Commission direction in SRM-SECY-14-0089, this draft guidance is complementary to the staff's draft revision of the standard review plan (SRP) on FOCD. Specifically, the revision of the SRP establishes guidance on graded negation action plan (NAP) criteria; provides for the

consideration of site-specific criteria, as necessary; allows for the use of license conditions to incorporate NAPs and the staff's "totality of facts" review approach; and, incorporates provisions for analyzing foreign financing. This draft regulatory guide and the SRP may be used by applicants or licensees for complying with FOCD requirements, including guidance on the subject of foreign financing. This draft regulatory guide may be used for license applications for new facilities, to be licensed under parts 50 and 52 of title 10 of the *Code of Federal Regulations* (10 CFR), applications for the renewal of facility licenses; or, applications for approval of direct or indirect transfers of facility licenses.

The provisions in the AEA for FOCD and inimicality, and the staff's reviews of these areas under NRC regulations, are derived from the same national security concerns, but appear in separate and distinct language in the AEA. As such, the FOCD determination is to be made with an orientation toward the common defense and security. The FOCD provisions in the AEA and NRC's regulations are country-neutral, whereas the staff's inimicality review and its findings directly account for a license applicant's country of origin and any ties or interests that could result in a determination of inimicality. While FOCD and inimicality are complementary, this draft regulatory guide does not address the means for determining whether issuance of a license would be inimical to the common defense and security or to the health and safety of the public.

While this draft regulatory guide is complementary to the draft FOCD SRP, which is currently issued for public comment, there are differences between the two. This draft guidance was completed after the FOCD SRP was issued for public comment, therefore guidance on some topics have been further refined. Specifically, this draft regulatory guide includes the consideration of NPUF applicants and licensees, as applicable, and also interagency comments on provisions for FOCD analysis and negation action plan development. These topics will be addressed, as applicable, in the draft FOCD SRP prior to finalizing for Commission approval.

III. Backfitting and Issue Finality

This draft regulatory guide describes acceptable methods for determining whether an applicant for (or holder of) a nuclear facility license issued under sections 103.d., “Commercial Licenses,” or 104.d., “Medical Therapy and Research and Development,” of the Atomic Energy Act of 1954, as amended (AEA or Act), is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (individually or collectively, a foreign entity). This determination, and any applicant or licensee actions needed to demonstrate that the applicant or licensee is not owned, controlled or dominated by an alien, a foreign corporation, or a foreign government, is not within the purview of the Backfit Rule, 10 CFR 50.109 or the issue finality provisions in 10 CFR part 52. Accordingly, the issuance of this regulatory guide does not represent backfitting or a violation of any issue finality provisions in part 52.

Dated at Rockville, Maryland, this 16th day of May 2016.

For the Nuclear Regulatory Commission.

William M. Dean, Director,
Office of Nuclear Reactor Regulation.

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